

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DOUGLAS HENDRICKSON,

No. C 14-01416 CRB
C 14-01417 CRB

Plaintiff,

v.

**ORDER DENYING MOTIONS TO
DISQUALIFY COUNSEL**

OCTAGON INC,

Defendant.

CLIFFORD LABOY, JR.,

Plaintiff,

v.

OCTAGON INC,

Defendant.

Defendant has moved in both the cases at issue here to disqualify Plaintiffs' counsel based on an asserted conflict of interest. See Motions to Disqualify (dks. 67 and 74). The Court concluded that these matters were suitable for resolution without oral argument. See Orders Vacating Hearing (dks. 85 and 91). For the following reasons, the Court DENIES Defendant's motions to disqualify.

"Motions to disqualify counsel are strongly disfavored" because they "can be misused to harass opposing counsel, to delay the litigation, or to intimidate an adversary into accepting settlement on terms that would not otherwise be acceptable." Visa U.S.A., Inc. v. First Data Corp., 241 F. Supp. 2d 1100, 1104 (N.D. Cal. 2003); Gregori v. Bank of Am., 207 Cal. App. 3d 291, 301 (1989). For this reason, "disqualification motions should be subjected to 'particularly strict judicial scrutiny.'" Optyl Eyewear Fashion Int'l Corp. v. Style Cos., Ltd., 760 F.2d 1045, 1050 (9th Cir. 1985).

As an initial matter, Defendant has not made a convincing showing that a conflict exists here under relevant case law. The actions presently before the Court involve, in part, certain fee sharing clauses in contracts entered into by Plaintiffs and Defendant. See Complaints (dks. 1 and 1); Mot's. Defendant contends that Plaintiffs entered into similar

1 contracts with their new sports agency, which is represented here by the same attorneys who
2 represent Plaintiffs. See Mot's. Thus, according to Defendant, Plaintiffs' counsel cannot
3 represent both Plaintiffs and their new agency because those parties' interests conflict. Id.

4 This argument fails because Defendant admits that "no cause of action [here]
5 explicitly contests the enforceability of [the new agency's] fee tail provision." See Replies
6 (dks. 77 and 83). Relevant case law thus indicates that Defendant impermissibly raises a
7 "hypothetical" conflict, see Fox Searchlight Pictures, Inc. v. Paladino, 89 Cal. App. 4th 294
8 (2001), or a "non-issue," see Dowell v. Biosense Webster, Inc., 179 Cal. App. 4th 564
9 (2009). Defendant also fails to explain how it has standing to bring the motions presently
10 before the Court. See In re Marriage of Murchison, 245 Cal. App. 4th 847, 851–53 (2016).

11 Furthermore, even if the Court assumed a conflict did exist here, Plaintiffs' attorneys
12 have submitted sworn affidavits indicating that their clients have been fully informed of the
13 subject of these motions to disqualify and have "waived any [] conflicts" that the Court might
14 find to exist. See Declarations (dks. 82 and 88). Defendant has not established that the
15 asserted conflict here is unwaivable, and thus Defendant's arguments would fail even if the
16 Court reached their merits. See U.S. v. Wheat, 813 F.2d 1399 (9th Cir. 1987); Visa U.S.A.,
17 Inc. v. First Data Corp., 241 F. Supp. 2d 1100 (N.D. Cal. 2003).

18 For the foregoing reasons, the Court DENIES Defendant's motions to disqualify
19 counsel. See Motions to Disqualify (dks. 67 and 74).

20 **IT IS SO ORDERED.**

21
22 Dated: July 12, 2016



CHARLES R. BREYER
UNITED STATES DISTRICT JUDGE